APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,617	12/30/2003	Nikolai G. Nikolov	6570P041	9855

8791 7590 08/23/2006		

BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

EXAMINER
NEWAY, SAMUEL G

ART UNIT	PAPER NUMBER
2194	

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>30 December 2003</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-34</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-34</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>30 December 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>02/10/05</u>.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____ .

1.   Claims 1 – 34 are pending and are considered below.

DETAILED ACTION

Claim Objections

2.   Claims 1 and 18 are objected to because of the following informalities: "method

to perform a output" in c) is believed to be a typographical error. Appropriate correction

is required.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

4.   Claims 11 – 12, 15 – 17, 28 – 29, and 32 – 34 are rejected under 35 U.S.C. 112,

second paragraph, as being indefinite for failing to particularly point out and distinctly

claim the subject matter which applicant regards as the invention.

5.   Claims 11 and 28 depend on Claims 1 and 18 respectively and recite "re-

identifying said plug-in module" and "re-executing said handler method", it is unclear

how and why the plug-in module of Claims 1 and 18 is re-identified and how and why

the handler method of Claims 1 and 18 is re-executed. Applicant's specification teaches

identifying a plug-in module and executing a handler as a consequence of invoking

another method. The Examiner will interpret the Claims as such.

       Claims 12 and 29 depend on Claims 1 and 18 and recite "identifying said plug-in

module" and "executing said handler method", it is unclear how and why the plug-in

module of Claims 1 and 18 is identified, and how and why the handler method of Claims

1 and 18 is executed. Applicant's specification teaches identifying a plug-in module and

executing a handler as a consequence of invoking another method. The Examiner will

interpret the Claims as such.

Claims 11 – 12 and 28 – 29 recite the limitation "a portion of said first method" in

first line. There is insufficient antecedent basis for this limitation in the claim.

Claims 15 and 32 recite the limitation "execute third object". There is insufficient

antecedent basis for this limitation in the claim.

Claims 17 and 34 recite the limitation "said identification of said class". There is

insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

6.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7.   Claims 18 – 34 are rejected under 35 U.S.C. 101 because the claimed invention

is directed to non-statutory subject matter. These Claims are directed to "machine

readable media" and, according to Applicant's specification, the media can include "data

signals embodied in a carrier wave or other propagation medium via a communication

link". This subject matter is a form of energy and does not fall within the statutory

categories, which are limited to process, machine, manufacture, or composition of

matter.

Claim Rejections - 35 USC § 102

8.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9.   Claims 1 – 3, 5 – 17, 18 – 20, and 22 – 34 are rejected under 35 U.S.C. 102(e)

as being anticipated by Avakian (US PGPub 2005/0039171).

10.   Claims 1, 18:

Avakian discloses a method, in an object oriented environment, comprising:

a) invoking a second method from a first method, said invoking comprising

providing an identification of said first method ("methodname", fig 9, paragraph 110) and

a class ("name of the class", fig 9, paragraph 108) that said first method is a part of;

b) identifying a plug-in module (fig 3, item 27A) for said first method based upon

said identification, said plug-in module containing a handler method (fig 3, paragraphs

64, 66)

c) executing said handler method to perform an output function for said first

method (fig 3, paragraphs 64, 66), and,

d) executing said first method from a point beyond where said second

method was invoked (fig 3, paragraphs 64, 66).

Claims 2, 19:

Avakian discloses the method of claim 1 wherein said executing of said handler

method causes an entry time for said first method to be recorded ("start time",

paragraph 144).

Claims 3, 20:

Avakian discloses the method of claim 1 wherein said executing of said handler

method causes an exit time for said first method to be recorded ("stop time", paragraph

144).

Claims 5 – 6, 8, 22 – 23, 25:

Avakian discloses the method of claim 1 wherein said executing of said handler

method causes an input parameter value and a returned value of said first method to be

recorded ("collecting data", paragraph 65).

Claims 7, 24:

Avakian discloses the method of claim 1 wherein said first method is a

constructor (paragraph 73).

Claims 9, 26:

Avakian discloses the method of claim 1 wherein said invoking further comprises

providing an input parameter value of said first method ("arguments passed to the

method", paragraph 64).

Claims 10, 27:

Avakian discloses the method of claim 1 wherein said invoking further comprises

identifying where said first method's instructions can be found in memory ("collecting

data", paragraph 65). It is inherent to identify the memory location of the method in

order to retrieve data information.

Claims 11 – 16, 28 – 33:

Avakian discloses the method of claim 1 further comprising a plurality of

instrumented methods being monitored in Java based applications (paragraph 51).

Claims 17, 34:

Avakian discloses the method of claim 1 wherein said invoking further comprises

providing said first method's arguments ("arguments passed to the method", paragraph

64).

Claim Rejections - 35 USC § 103

11.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

12.   Claims 4 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Avakian (US PGPub 2005/0039171) in view of Hibbeler et al. (US Patent 7,093,234).

13.   Claims 4, 21

Avakian discloses the method of claim 1 but does not disclose wherein said

executing of said handler method causes a counter maintained for said first method to

be incremented.

Hibbeler discloses an application instrumentation method by inserting monitoring

code. He also discloses a counting mechanism "to count the number of calls to a

function" (col. 8, lines 6-10). It would have been obvious to one with ordinary skill in the arts at the time the invention was made to keep track of and count the methods in Avakian's system, for monitoring, testing or debugging program execution. One would have been motivated because counting the number of calls made to certain functions will identify the ones called most frequently which in turn will help identify bottlenecks in the execution. Identifying bottlenecks can guide reprogramming by focusing energy only on certain portions of a code.

Conclusion

14.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cobb et al. (US PGPub 2002/0170036) discloses adding new code to existing object code in order to determine if a routine has stalled.

Cirne (US Patent 6,260,187) discloses a code modifier for object-oriented code that may be used to generate diagnostic or security information.

15.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Neway whose telephone number is 571-270-1058. The examiner can normally be reached on Mon - Thur 8:00AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Myhre can be reached on 571-270-1065. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SGN
08/17/06

James W. Myhre
Supervisory Patent Examiner